

# **Exhibit 1**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona corporation,	)	
	)	
Plaintiff/Counterdefendant,	)	
	)	
vs.	)	NO. 2:06-CV-02141-DGC
	)	
MIDWEST INDUSTRIAL SUPPLY, INC., an Ohio corporation authorized to do business in Arizona,	)	
	)	
Defendant/Counterclaimant.	)	

Phoenix, Arizona  
April 10, 2008  
9:00 a.m.

C O N F I D E N T I A L  
DEPOSITION OF CHAD FALKENBERG  
SOILWORKS, LLC 30(b)(6)  
(VOLUME II, Pages 230 - 356)

LEA, SHERMAN & HABESKI  
Registered Professional Reporters  
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Certified Reporter  
Certificate No. 50320

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6	50	Soil-Sement Patent No. 1,204,198 .....	322
7	51	Soil-Sement Patent No. 2,222,732 .....	322
8	52	Google search results for soil sement .....	324
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10	54	HTML Code for Soiltac Home Page .....	339
11	55	HTML Code for Soiltac Home Page .....	345
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BY MR. SKERIOTIS .....	234	
EXHIBITS	DESCRIPTION	PAGE
38	E-mail dated 11-15-07 from Steve Gordner to Steve Hickman Re Dust Contral .....	242
39	Job Specification for Santiago Canyon College .....	247
40	Dust Abatement Handbook - U.S. Marine Corps Systems Command .....	251
41	Dust Control Field Handbook for U.S. Army Engineer Research and Development Center ....	257
42	Durasoil Product Information Packet .....	263
43	Durasoil Material Safety Data Sheet .....	288
44	Soilworks GSA Price Schedule .....	292
45	Copy of Durasoil's Web Page from 10-18-04 .....	300
46	Polar Supply Material Estimate dated 5-18-07 .....	306
47	Polar Supply Material Estimate dated 5-31-07 .....	307
48	Copy of Durasoil's Web page from 2-19-05 ....	308
49	Copy of Durasoil's Web page from 4-2-05 ....	310

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DEPOSITION OF CHAD FALKENBERG,  
taken at 9:00 a.m., on April 10, 2008, at the law  
offices of Jones, Skelton & Hochuli, 2901 North Central  
Avenue, Suite 800, Phoenix, Arizona, before LINDA  
BLACKMON, RPR/RMR, a Certified Reporter in the State of  
Arizona.

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Also Present:  
Robert Vitale

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1 break and gather up some information and see where we  
2 are at.

3 (Recess.)

4 (Exhibits Nos. 50 and 51 were marked.)

5 Q. BY MR. SKERIOTIS: Mr. Falkenberg, you have  
6 just been handed what have been marked Exhibits 50 and  
7 51, do you recognize those documents?

8 A. I haven't seen these documents before.

9 Q. I will purport to you that Exhibit 50 is a  
10 U.S. trademark registration for Soil-Sement,  
11 S-e-m-e-n-t, Registration No. 1,204,198, and Exhibit 51  
12 is a U.S. trademark registration for the same mark  
13 Soil-Sement, Registration No. 2,222,732, and the  
14 differences between the two are basically the goods.

15 Do you have a product that is competitive  
16 to Midwest's Soil-Sement?

17 A. I believe we have products that would compete  
18 against Soil-Sement in the marketplace.

19 Q. In fact the product you have is Soiltac,  
20 correct?

21 A. That would be one of the products that I  
22 believe would compete with Soil-Sement.

23 Q. What other ones do you have that you believe  
24 would compete with Soil-Sement?

25 A. It would depend on the application and how the

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1 Soil-Sement was being used.

2 Q. To your knowledge has Soil-Sement ever been in  
3 competition with Durasoil?

4 A. Not to my recollection.

5 Q. Has Soil-Sement ever been in competition with  
6 Gorilla-Snot?

7 A. I think it's very likely.

8 Q. Has Soil-Sement ever been in competition with  
9 Surtac?

10 A. It's possible.

11 Q. And I think there is one more. Has  
12 Soil-Sement ever been in competition with Powdered  
13 Soiltac?

14 A. That's possible.

15 Q. I think that's all five. When did you first  
16 know that Soil-Sement was a registered trademark of  
17 Midwest?

18 A. I am really not sure.

19 Q. When did you first become aware of the product  
20 Soil-Sement?

21 A. Most likely when I worked for Environmental  
22 Products Applications.

23 Q. And that was prior to 2003 then, correct?

24 A. That sounds right.

25 (Deposition Exhibit No. 52 was marked.)

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1 Q. BY MR. SKERIOTIS: Mr. Falkenberg, you have  
2 just been handed what has been marked as Exhibit 52; do  
3 you recognize that document?

4 A. It appears to be a printout of Google search  
5 results.

6 Q. Google search results for the mark soil  
7 sement?

8 A. Soil sement is listed in the search, and  
9 that's soil sement with an S.

10 Q. Correct. And do you see on the right-hand  
11 side under Sponsored Links it says Soiltac soil  
12 stabilizer? Do you see that?

13 A. I see that.

14 Q. Do you know how it came to be that the search  
15 for soil sement on Google's web site produced as a  
16 sponsored link Soiltac soil stabilizer?

17 A. There must be a term that is a trigger for  
18 that sponsored link to appear.

19 Q. What term would that be?

20 A. Well, if I am guessing it would either be the  
21 entire phrase or it would be either of those words.

22 Q. Who is in charge at Soilworks of adopting key  
23 words for Google's web site?

24 A. I am the person that primarily has dealt with  
25 our Google campaigns.

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1 Q. Was there ever a time that you indicated to  
2 Google that you would like your web site Soiltac dot  
3 com to pop up when someone is searching for soil  
4 sement?

5 A. What do you mean by indicated to them?

6 Q. Well, have you ever taken out the key word  
7 soil sement so that Soiltac dot com would pop up as a  
8 sponsored link?

9 A. I believe so.

10 Q. And you did that because you wanted someone  
11 searching for soil sement to see Soiltac under the  
12 sponsored link, correct?

13 A. That trigger, we wanted the result of our ad  
14 to show up with that trigger.

15 Q. Correct. And the trigger being soil sement?

16 A. If that's the key word that was being used.

17 Q. Do you know if that's the key word that was  
18 being used?

19 A. I believe that that key word is used or has  
20 been used.

21 Q. It's my understanding, then, that you chose  
22 the trademark soil sement as a key word on Google's web  
23 site so that when someone searches for soil sement they  
24 find Soiltac, correct?

25 A. As a trigger term?

<p style="text-align: right;">326</p> <p>1 Q. Right. Correct.</p> <p>2 A. I think that sounds correct.</p> <p>3 Q. And you did that because you wanted someone</p> <p>4 who is searching for Midwest's Soil-Sement to know</p> <p>5 and/or find Soiltac?</p> <p>6 A. We compete in similar industries.</p> <p>7 Q. Right. But that's what you intended to have</p> <p>8 happen, right, somebody searching for Midwest's</p> <p>9 Soil-Sement would find Soiltac?</p> <p>10 A. Soil-Sement can also be misspelled and that is</p> <p>11 a very common misspelling, there is soil sement with a</p> <p>12 S and soil cement with a C.</p> <p>13 Q. But you wanted someone searching for</p> <p>14 Soil-Sement to find Soiltac, correct?</p> <p>15 A. I think that's reasonable to state.</p> <p>16 Q. Could you turn to Page 2. Do you see</p> <p>17 International Soil Technologies, LLC?</p> <p>18 A. I do.</p> <p>19 Q. Do you know who that is?</p> <p>20 A. Yes.</p> <p>21 Q. Who is that?</p> <p>22 A. It's another one of the companies that I am</p> <p>23 related to.</p> <p>24 Q. How are you related to International Soil</p> <p>25 Technologies, LLC?</p>	<p style="text-align: right;">328</p> <p>1 Q. Why doesn't Soilworks hold a contractor's</p> <p>2 license?</p> <p>3 A. We felt it was beneficial to keep those</p> <p>4 separate.</p> <p>5 Q. Who felt that way?</p> <p>6 A. Dorian and myself.</p> <p>7 Q. Does International Soil Technologies, LLC have</p> <p>8 a web site?</p> <p>9 A. I don't think so.</p> <p>10 Q. What products does International Soil</p> <p>11 Technologies sell?</p> <p>12 A. I would say that they can sell the product</p> <p>13 lines that are manufactured by Soilworks. I don't see</p> <p>14 them necessarily selling anything else.</p> <p>15 Q. I am sorry, I guess I forgot already, did you</p> <p>16 say International Soil Technologies has a web site?</p> <p>17 A. I don't think it does.</p> <p>18 Q. So you are telling me legally it's in no way</p> <p>19 related to Soilworks; is that correct?</p> <p>20 MR. DOSEK: Object to the form.</p> <p>21 A. I am saying those are two separate companies.</p> <p>22 Q. BY MR. SKERIOTIS: Do they both sell soil</p> <p>23 stabilization products?</p> <p>24 A. I believe they both can.</p> <p>25 Q. Have you sold Durasoil under International</p>
<p style="text-align: right;">327</p> <p>1 A. I am one of the members.</p> <p>2 Q. And what is International Soil Technologies,</p> <p>3 LLC?</p> <p>4 A. It's a company that primarily is in the</p> <p>5 business of applying soil stabilization, dust control</p> <p>6 and erosion control products.</p> <p>7 Q. Where?</p> <p>8 A. Wherever it's allowed to do business.</p> <p>9 Q. Who are the members of International Soil</p> <p>10 Technologies, LLC?</p> <p>11 A. I believe Masterson Properties and Dorian</p> <p>12 Falkenberg.</p> <p>13 Q. Is that in any way related to Soilworks?</p> <p>14 A. They are two separate companies.</p> <p>15 Q. Are you a member of any other company other</p> <p>16 than International Soil Technologies and Soilworks?</p> <p>17 A. I don't think so.</p> <p>18 Q. Why was International Soil Technologies</p> <p>19 established apart from Soilworks?</p> <p>20 A. It holds our contracting license to do</p> <p>21 business and Soilworks does not have a contractor's</p> <p>22 license.</p> <p>23 Q. And the contractor's license is for what?</p> <p>24 A. Certain bids require a contractor's license to</p> <p>25 be able to bid on that project.</p>	<p style="text-align: right;">329</p> <p>1 Soil Technologies, LLC?</p> <p>2 A. It's possible.</p> <p>3 Q. You don't know if you have or not?</p> <p>4 A. I can't say for sure.</p> <p>5 Q. What is your interest in International Soil</p> <p>6 Technologies? Are you a minority holder, majority; do</p> <p>7 you recall?</p> <p>8 A. I am not majority.</p> <p>9 Q. Who is the majority holder?</p> <p>10 A. Likely Masterson Properties.</p> <p>11 Q. Are they also a majority holder of Soilworks?</p> <p>12 A. That's likely.</p> <p>13 Q. Do you and Dorian together hold a minority</p> <p>14 share in Soilworks or a minority share together?</p> <p>15 A. I am not sure where it stands right now.</p> <p>16 Q. When it was first formed were you and Dorian</p> <p>17 together majority shareholders or minority?</p> <p>18 A. I am pretty sure we were minority.</p> <p>19 Q. What makes you believe you are not sure where</p> <p>20 it stands now?</p> <p>21 A. Things change over time.</p> <p>22 Q. So your interests in Soilworks have changed</p> <p>23 since it was first formed?</p> <p>24 A. I would love to own 100 percent myself of</p> <p>25 both.</p>